

**COMPLAINT INVESTIGATION SUMMARY**

COMPLAINT NUMBER:	2184.05
COMPLAINT INVESTIGATOR:	Joe Bear
DATE OF COMPLAINT:	October 8, 2004
DATE OF REPORT:	November 4, 2005
REQUEST FOR RECONSIDERATION:	yes/revised December 6, 2004
DATE OF CLOSURE:	February 15, 2005

**COMPLAINT ISSUES:**

Whether the Tri-Creek School Corporation and the Northwest Indiana Special Education Cooperative violated:

511 IAC 7-27-7(a) by failing to implement the student's individualized education program (IEP) as written, specifically by failing to implement the following accommodations:

- a. preferential seating;
- b. repetition of instructions;
- c. modified testing including extended time; and
- d. modified assignments (reduction of the length of assignments).

511 IAC 7-23-1(p) by disclosing personally identifiable information about the student without written and dated consent of the parent, specifically by disclosing information from the student's educational records to a private athletic organization.

**FINDINGS OF FACT:**

1. The Student has been identified as having a learning disability and has been determined eligible for special education and related services.
2. The Student's individualized education program (IEP) that was in effect from November 21, 2002, to November 19, 2003 (Prior IEP) called for the Student to receive preferential seating. The Student's IEP that was in effect from November 19, 2003, through November 17, 2004 (Current IEP) also calls for the same accommodation. In the section of both IEPs addressing educational needs and present levels of performance, there are references to a hearing loss, with a suggestion that the Student may require or benefit from preferential seating.
3. The Conference Notes for the case conference committee (CCC) meeting held November 19, 2003, include references to preferential seating (e.g., "moved to front" of language arts class; "sitting up front" in math class; and "sitting up front" in social studies class). The School submitted a memorandum dated October 20, 2004, signed by the Student's previous general education teachers, stating their recollection(s) that the Student was seated in the front of the classroom(s) during the 2003-2004 school year. The School did not retain teachers' notes at the end of the school year and, therefore, has no documentation that preferential seating was provided during the 2003-2004 school year. To show that preferential seating was provided, the School submitted a testing accommodations form that was faxed to the local special education office prior to the administration of ISTEP+. Although the Complainant has not raised a question about the implementation of accommodations for ISTEP+, the only accommodations permitted during ISTEP+

are the accommodations that have been utilized in the classroom. With its letter requesting reconsideration, the School submitted seating charts for each of the Student's current classes in the 2004-2005 school year. The seating charts show that the Student's assigned seat is in the front row in each class.

4. The Prior IEP does not call for a repetition of instructions. The Current IEP also does not call for a repetition of instructions, although in the section addressing educational needs and present levels of performance there is a suggestion that the Student may benefit from repeated directions. This suggestion was not adopted by the CCC, as repetition of instructions is not listed among the Suggested Modifications/Accommodations/Supports to General Education (Form 204).
5. The Prior IEP called for "modified testing." The Current IEP calls for "modified tests ... as needed, tests taken/read with LRE teacher or paraprofessional as needed." In addition, the Current IEP requires extended time for ISTEP+ and reading aloud parts of ISTEP+.
6. The School submitted a memorandum dated October 20, 2004, signed by the Student's previous general education teachers, stating their recollection(s) that various testing accommodations (e.g., use of notes, testing in small group setting with special education teacher, etc.) were provided during the 2003-2004 school year. The School did not retain the Student's notes and tests at the end of the school year and, therefore, has no documentation that testing accommodations were provided during the 2003-2004 school year. For the 2004-2005 school year, the School submitted a sample language arts test that was modified by crossing out one section and by changing the points for a written response section from 40 possible points to 20 points as well as undated tests of geography and the metric system. With its letter requesting reconsideration, the School submitted additional samples of the Student's tests, with explanations of the accommodations provided. The School has not retained all of the Student's written work since the beginning of the 2004-2005 school year and, therefore, some of the samples were dated after the complaint investigation had been completed. To show that extra time was provided for completion of ISTEP+, and that the mathematics tests of ISTEP+ were read to the Student, the School submitted a testing accommodations form that was faxed to the special education office prior to the administration of ISTEP+. Although the Complainant has not raised a question about the implementation of accommodations for ISTEP+, the only accommodations permitted during ISTEP+ are the accommodations that have been utilized in the classroom. The Complainant acknowledges that, as of the time of the reconsideration of this Complaint Investigation Report, the School is modifying the Student's tests in all classes.
7. The Prior IEP calls for "modified written work." The Current IEP calls for modified assignments as needed and extended time for written assignments as needed.
8. The School submitted a memorandum dated October 20, 2004, signed by the Student's previous general education teachers, stating their recollection(s) that assignment modifications were discussed with the special education teacher in team meetings, that the Student was permitted to use a dictionary or spell check, and that the Student was permitted extra days to make up missing assignments in science class. The School did not retain the Student's written work at the end of the school year and, therefore, has no documentation that written work was modified or time extended for written work during the 2003-2004 school year. For the 2004-2005 school year, the School submitted as samples a language arts essay assignment and a social studies assignment. With its letter requesting reconsideration, the School submitted additional samples of the Student's written assignments, with explanations of the accommodations provided. The School has not retained all of the Student's written work since the beginning of the 2004-2005 school year and, therefore, some of the samples were dated after the complaint investigation had been completed. The

Complainant acknowledges that, as of the time of the reconsideration of this Complaint Investigation Report, the School is modifying the Student's written assignments in all classes.

9. The Complainant sought to arrange for the Student's participation in an athletic program sponsored by a private not-for-profit corporation (Sports Organization). The local Sports Organization is an affiliate of a national Sports Organization that has established an eligibility policy requiring a 2.0 or 70% grade point average (GPA). If a participating athlete has not met the GPA requirement, the athlete may submit a Scholastic Eligibility Form. Should a local team play in a national tournament, the national Sports Organization requires proof of eligibility of all players.
10. The Scholastic Eligibility Form is a standard form prescribed by the national Sports Organization. The current version of the Scholastic Eligibility Form includes a statement addressed to School/Home School Administrator, asking "you, the school officials, to help us determine if participating in the ... program WOULD or WOULD NOT benefit this child." The Scholastic Eligibility Form also states that the Form will help the local Sports Organization "monitor the progress of the child throughout the season." The Scholastic Eligibility Form contains a space for the signature of the parent or guardian in the identification block at the top of the Form.
11. In August 2004, the Complainant submitted the Student's report card to an official of the local Sports Organization. The Student's grades did not meet the GPA requirement.
12. On or about August 12, 2004, the Complainant contacted the Principal to ask the Principal to sign the Scholastic Eligibility Form. The Principal refused to sign the Scholastic Eligibility Form, as the School's building level administrators had collectively agreed not to approve or deny any Scholastic Eligibility Forms.
13. On August 13, 2004, the Complainant signed the Student's Scholastic Eligibility Form and arranged for the Student's private tutor to sign the Student's Scholastic Eligibility Form. The Student's tutor is a teacher who is not employed by the School. The Complainant submitted the signed Form to the local Sports Organization.
14. The Sports Organization advised the Complainant to request a School administrator to initial the Student's Scholastic Eligibility Form. The Complainant followed up on August 16, 2004, by contacting the School Superintendent and faxing the Student's Scholastic Eligibility Form to the Superintendent. The Superintendent delivered the Student's signed Scholastic Eligibility Form to the Principal on or about August 16, 2004.
15. On August 16, 2004, or August 17, 2004, the Principal called a leader of the local Sports Organization regarding the validity of the Student's Scholastic Eligibility Form. Upon being told that the Sports Organization would accept a Scholastic Eligibility Form signed by any educator, the Principal called the national office of the Sports Organization for clarification. The Principal denies using the Student's name in the conversation. However, the Principal acknowledges disclosing that the unnamed student is enrolled in the school for which the Principal is the administrator, and the Principal acknowledges discussing the circumstances generally of the unnamed student's Scholastic Eligibility Form that had been signed by a person other than the Principal.

## **CONCLUSIONS:**

1. a. While Finding of Fact #3 indicates that the School has provided preferential seating for the Student during the 2004-2005 school year, Findings of Fact #2 and #3 indicate that the School has failed to document that the Student's IEP was implemented during the 2003-2004 school

year by providing preferential seating during general education classes. Therefore, a violation of 511 IAC 7-27-7(a) is found with respect to preferential seating during the 2003-2004 school year.

- b. Finding of Fact #4 indicates that the Student's Prior and Current IEPs did not require repetition of instructions, as an accommodation. Therefore, a violation of 511 IAC 7-27-7(a) is not found with respect to repetition of instructions.
  - c. While Finding of Fact #6 indicates that the School has provided modified testing for some of the Student's tests during the 2004-2005 school year, Findings of Fact #5 and #6 indicate that the School has failed to document that the Student's IEP was implemented by providing modified testing during the 2003-2004 school year and by providing modified testing for all tests during the 2004-2005 school year prior to the date the Complaint was filed. Therefore, a violation of 511 IAC 7-27-7(a) is found with respect to modified testing. However, Finding of Fact #6 also indicates that corrective action has been taken.
  - d. While Finding of Fact #8 indicates that the School has provided modified assignments for some of the Student's assignments during the 2004-2005 school year, Findings of Fact #7 and #8 indicate that the School has failed to document that the Student's IEP was implemented by providing modified assignments during the 2003-2004 school year and by providing modified assignments for all written assignments during the 2004-2005 school year. Therefore, a violation of 511 IAC 7-27-7(a) is found with respect to modified assignments. However, Finding of Fact #8 also indicates that corrective action has been taken.
2. Finding of Fact #15 indicates that by discussing a Scholastic Eligibility Form signed by an educator not employed by the School, the School disclosed to the Sports Organization information that would make the Student's identity easily traceable, together with the information about the Student's academic standing. The School was required to obtain written and dated consent of the parent before disclosing personally identifiable information about the Student; however, nothing in Findings of Fact #9, #10, #11, #12, #13, and #14 indicates that the School obtained written and dated consent of the parent. Therefore, a violation of 511 IAC 7-23-1(p) is found.

**The Department of Education, Division of Exceptional Learners, requires the following corrective action based on the Findings of Fact and Conclusions listed above.**

#### **CORRECTIVE ACTION:**

The Tri-Creek School Corporation and the Northwest Indiana Special Education Cooperative shall:

1. Develop and implement a form for documenting the implementation of the accommodations and modifications required by the Student's IEP.

Documentation of compliance (consisting of a copy of the form for documenting the Student's accommodations, together with the documentation created during a one-week period) shall be submitted to the Division by January 14, 2005.

2. Inform all school personnel, by inservice training or memorandum, of the confidentiality requirements of 511 IAC 7-23-1(p), including the circumstances in which a student's name may be personally identifiable information and the circumstances in which a student may be identifiable even though a name is not used.

Documentation of compliance (consisting of a memorandum OR an agenda from an inservice training AND the names and signatures of those participating), shall be submitted to the Division by January 14, 2005.